

REMARKS

Claims 42-77 are pending in the present application.

The rejection of Claims 42-60, 76, and 77 under 35 U.S.C. §103(a) over Monsheimer et al (US 2004/0137228), is respectfully traversed on the grounds that Monsheimer et al is not properly “prior art” against the presently claimed invention.

Monsheimer et al published on July 15, 2004, based on an application filed on September 22, 2003. Thus, Monsheimer et al is available as “prior art” under 35 U.S.C. §102(a) as of July 15, 2004 and under 35 U.S.C. §102(e) as of September 22, 2003. The earliest known published equivalent of Monsheimer et al is CA 2441676, which published on March 21, 2004. Thus, CA 2441676 is available as “prior art” under 35 U.S.C. §102(a) as of March 21, 2004.

The present application is a National Stage (371) of PCT/EP04/53505, filed on December 15, 2004, which claims priority to DE 10 2004 010 162.0, which was filed on February 27, 2004. Since the publication of Monsheimer et al and its foreign equivalents published less than one year from the filing of the present application in the U.S., these publications are not statutory bars under 35 U.S.C. §102(b). Accordingly, to antedate Monsheimer et al and the equivalent foreign publications and remove the same as “prior art” under 35 U.S.C. §102(a) applicants **submit herewith** a certified English translation of DE 10 2004 010 162.0. Applicants request that the Examiner acknowledge entitlement to the benefit of the priority filing date of February 27, 2004 of DE 10 2004 010 162.0 and, as such, the removal of Monsheimer et al and the equivalent foreign publications as “prior art” under 35 U.S.C. §102(a).

With the removal of Monsheimer et al and the equivalent foreign publications as “prior art” under 35 U.S.C. §102(a), the only issue that remains is the availability of Monsheimer et al as “prior art” under 35 U.S.C. §102(e).

MPEP §706.02(l)(2) states:

"Applications and references (whether patents, patent applications, patent application publications, etc.) will be considered by the examiner to be owned by, or subject to an obligation of assignment to the same persons, at the time the invention was made, if the applicant(s) or an attorney or agent of record makes a statement to the effect that the application and the reference were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person."

An Assignment for the present application was recorded on February 25, 2008 at Reel No. 020554, Frames 0645-0654. The present invention and the invention as described by Monsheimer et al were, at the time the present invention was made, owned by, or subject to an obligation of assignment to, the same person (i.e., Degussa AG).

35 U.S.C. §103(c) states:

"Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person."

For the reasons give above, Monsheimer et al is a reference that is, at best, available under 35 U.S.C. § 102(e). Since Applicants have properly established common ownership above, Applicants have removed Monsheimer et al as a possible reference under the above-mentioned provisions granted to Applicants by 35 U.S.C. §103(c) and MPEP §706.02(l)(2).

In view of the foregoing, the rejection over Monsheimer et al is no longer tenable and should be withdrawn. Acknowledgement to this effect is requested.

Applicants submit that the present application is in condition for allowance. Early notification to this effect is respectfully requested.

Respectfully submitted,

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